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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1968

No. 806

WAYNE KNITTING MILLS and
THE MAY CORPORATION,

Petitioners

v.

RUSSELL HOSIERY MILLS, INC.,

Respondent

RESPONDENT'S BRIEF IN OPPOSITION TO THE PETITION FOR WRIT OF CERTIORARI

INTRODUCTORY STATEMENT

This is an ordinary and simple patent case involving a single patent claim. It presents no underlying fact issue, no conflict in decision between Courts of Appeals, no question of general interest or importance, and no question of law not already clearly resolved by prior decisions of the Supreme Court. It is merely a private suit between a purchaser of a patent and an alleged infringer, wherein the Petitioners (Plaintiffs below) now question whether the mandate regarding patent claims in the Patent Statute, 35 USC § 112, quoted in the next section, must be heeded. What Petitioners seek by their Petition is an overthrow of

the time-honored rule that each claim of a patent must contain language within its four corners clearly particularizing and distinguishing what is claimed from that which was obvious from the prior art. Concluding that Claim 3 of the SARBO patent in suit contained no language which could distinguish it from what was admittedly old and obvious, the Court of Appeals for the Fourth Circuit correctly held the claim invalid for overclaiming and failure to satisfy 35 USC § 112, without reaching the question of obviousness of the claimed product.

THE STATUTE INVOLVED

The relevant portions of the Statute, 35 USC § 112, on which the appellate court ruling of claim invalidity turned, and which the claim in issue failed to satisfy, details certain absolute requirements for patent specifications and claims as follows:

> "§ 112. Specification
>
> The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same, and shall set forth the best mode contemplated by the inventor of carrying out his invention.
>
> The specification shall conclude with one or more claims *particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.* * * *" (emphasis supplied)

QUESTIONS PRESENTED

The pivotal and only question presented by the Petition is whether, in a patent for a product, a patent reciting only admittedly old elements and having no language which particularizes the only aspect of the product which Petitioners regard as the supposed novelty over the prior art, thus failing to distinguish that which is claimed from "that which plaintiffs concede was not new", meets the statutory requirement of particularity and distinctness of 35 USC § 112.

ADDITIONAL STATEMENT OF THE CASE

Some additional details on the nature of the case need to be stated. Petitioner May, the party instrumental in bringing this infringement suit, had, independently of any knowledge of SARBO, developed and begun manufacture in 1963 of its socks alleged to now come under the SARBO patent more than a year prior to its purchase of the patent from another company who had bought the patent one month prior to such purchase. Petitioner May had been commercially making foot covers or shoe-top-length foot socks only since 1962.

Petitioners misleadingly represent, at page 4 of their Petition, that it is not clear just when Respondent first entered the foot cover field, whereas the record clearly shows that Respondent had been commercially producing shoe-top-length foot socks or foot covers since at least as early as 1954, four years prior to the development by SARBO of his patented foot sock. (DA 62-65, 213-215, and DX-19, 20 and 21)[1] In their characterization on page 3 of their

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[1] For convenience the parenthetical citations to the Petition, and to the appeal briefs and appendices which designated the parties by their initial titles, employ abbreviations as follows: DA - Defendant's Appendix; DX - Defendant's Exhibit; PB - Plaintiffs' (now Petitioners) Brief; Pet.B - Petitioners' Petition for Writ of Certiorari.

Petition of what was commercially available prior to SARBO, Petitioners notably fail to mention these socks of Respondent which had a circular seamless knit body with reciprocatorily knit heel and toe (for shaping) and elastic rims formed with *laid in rubber threads* (incorporated in the same way as in the rim of the patent in suit) to fit below the tops of many shoes then in use, such as nurses' shoes, oxfords, bowling shoes, golf shoes and sneakers. Petitioners admitted in their Court of Appeals Brief (PB 19) that this elastic rim of Respondent's 1954 socks fitted "below the ankle".

Claim 3 of the SARBO patent (the only claim in issue) defined the patented product merely as a knitted foot cover having three elements: (1) a seamless tubular rim "including at least some rubber threads", to form a foot entry opening, (2) a seamless tubular body of greater axial length than the rim and having the same knitting structure throughout its axial length and periphery, and (3) a seam at the bottom, to form a symmetrical pouch-like body. The Petitioners have always conceded, and both Courts below acknowledged, that each of these claimed elements were well known and had been disclosed in the prior art. The District Court had concluded, without recognizing its absence from the claim, that the only supposed inobviousness and possible new function in this assemblage of old elements was the specific location of the rubber-incorporating rim "below the ankle and entirely within the shoe", as the District Court thought those in the art could not grasp the idea "that rubber or elastic yarn could be laid in with proper tension to keep a below the ankle length sock on the foot" (274 F. Supp. 940, 941, DA-13, 15, Pet.B 33). In this, the District Court obviously overlooked the fact that Respondent's 1954 socks demonstrated that exactly this idea had been grasped and and this function put into practice in the prior art.

The Court of Appeals specifically recognized that prior art patents certainly disclosed each of the claimed elements in "knitted foot covers", identifying them at footnote 4 of its decision (Pet.B 32) as follows:

> "For example: (a) knitted foot covers made from symmetrically knit straight seamless tubes were disclosed by 1923 Teichmann British Patent No. 184,-470; 1922 Teichmann German Patent No. 362,040; 1923 Teichmann Swiss Patent No. 102,524; 1929 Teichmann U.S. Patent No. 1,724,784; 1932 Bellak U.S. Patent No. 1,841,518; 1944 Grey U.S. Patent No. 2,333,373; 1944 Herbert U.S. Patent No. 2,344,773; and 1946 Herbert U.S. Patent No. 2,400,692; (b) fabrication of the top or rim of tubular foot covers to cause them to hug or cling to the foot was taught by Teichmann British (a cord or lacing device), Bellak U.S. (plain stitch or laced-in elastic), and Grey U.S. and Herbert U.S. (knitted welts or double thickness fabric); (c) 1941 St. Pierre U.S. Patent No. 2,246,079 taught the use of laid-in rubber threads in the rims of various seamless circular knit socks and stockings."

Faced with Respondent's prior use and these prior patents, clearly refuting the District Court's statement of what was supposedly novel, the Petitioners urged in the Court of Appeals that the novelty in the SARBO sock lay, not merely in locating the rim in an area so broadly characterized as "below the ankle", but in the specific disposition of the rim so as "to fit below the instep" so that the product "covers *only* the toe, sole and heel portion of a wearer's foot" and is "hidden from view by a *low cut* ladies' shoe or slipper". (PB 4, 17) (Emphasis supplied) Their arguments in their Petition similarly predicate novelty only on this restricted rim location "below the instep". (Pet.B 10)

Without reaching the question of obviousness of this construction, the Court of Appeals applied the statutory standard of 35 USC § 112 to the claim and held it invalid, because of failure of the claim to particularize this location which Petitioners regard as the essential and only distinction over the prior art, stating:

> "From plaintiffs' argument and the district judge's conclusion, it is apparent that the lower location where the laid-in rubber rim serves its function is

> critical to the validity of Sarbo Claim 3, both as to inobviousness and new function. Yet the exact location of the rim is not identified anywhere in the claim."

The Court of Appeals focused sharply on the failure of the claim to include any restriction to confine the rim location "below the instep", stating: (Pet.B 33-34)

> "At most, the claim implies a location below the ankle, but plaintiffs and the court below predicate the validity of the claim, not on the entire area below the ankle, but on the undetermined location below the ankle where the ankle ceases to resemble the cylindrical conformation of the leg and exhibits the irregular configuration of the foot. Specifically, Sarbo Claim 3 gives no particularity as to the part or shape of the foot or leg portion the rim contacts against or where it is located relative to the instep."

The appellate court dismissed Petitioners' argument that the functional terminal phrase of the Claim provided any such limitation, stating: (Pet.B 34)

> "While this claim recites that the body does function as 'tip, sole and heel portions', absent is any language to exclude the body from also covering part of the instep, the ankle or parts of the foot in the area below the ankle."

ARGUMENT

Petitioners tacitly acknowledge that SARBO Claim 3 contains no express language limiting the rim location to the "below the instep" region which is the only novelty asserted for the product. The sum and substance of their argument is that the broad, generic term "foot cover" in the introductory phrase of the claim and the recital that the body functions to cover (at least) the tip, sole and toe, should be construed in light of the specification and the illustrative example shown in Figure 5, so as to limit the claim to "a structure which was located on the foot entirely below

the ankle and *below the instep* in such a manner as not to be visible above the shoe top". (Pet.B 8, 10) Significantly, Respondent's Style 1334 C, which was held by the District Court to infringe this Claim, has its rim located definitely up on the instep, rather than below the instep, as is revealed by the photograph at PA 208, and hence could not infringe if the Claim is limited, as Petitioners argue, to a below-the-instep rim. Furthermore, even the Petitioners' commercial foot cover is not covered by the Claim as so limited, since its rim also falls up on the instep, as the photograph at Pet. B iii clearly shows.

Repeatedly, Petitioners assert that the term "foot cover" in SARBO Claim 3 means a foot sock which is wholly concealed beneath the top of "the shoe". Their argument is based on the reference to the product as an "undersock" in the first sentence of the patent, and the illustration in Figure 5 of an example of one form the end product may take. But even if this argument is accepted, what Petitioners overlook, or avoid, is that no particular type of shoe is identified anywhere in the claims, the description, or the drawings, and in fact the word "shoe" does not even occur in the patent. Therefore, the crucial question arises, even if Petitioners' interpretation of "foot cover" is accepted to mean a "below the shoe-top foot cover": "What kind of shoe must the sock fit wholly within?" The specification is absolutely silent in this respect.

But significantly, the patentee elected to stand on Claim 3 without any reference to a shoe or any limitation whatsoever as to the type of shoe the foot cover would fit within. As thus drawn, the Claim applied with equal force to "foot cover" articles which fit below the top of and wholly within any shoe, even a high top shoe. Most certainly it applied to foot covers for many types of below-the-ankle shoes such as nurses' shoes, oxfords, bowling shoes, sneakers, golf shoes, etc., having its rubber-incorporating rim on, rather than below, the instep, just as the rim of Respondent's prior art 1954 foot covers. Clearly, therefore, the

Claim fails to particularize the location of the rim, even if construed to be below a shoe top, in any manner which would distinguish the location from what was already known in the prior art.

Petitioners cite many decisions containing general statements that, in certain cases, the specifications and drawings of a patent may be referred to as "an aid in interpreting the claims if the claims contain an ambiguity clarified by the specification or drawings", and assert that the term "foot cover" in SARBO Claim 3 is such an ambiguity. However, it must be remembered that the particularization of the rim location *below the instep* is absolutely essential to point out and distinguish the only thing which Petitioners assert to be novel about the patented product. Therefore, in this case, it is this absolutely essential detail (the rim location below the instep) which is **wholly** lacking from the claim and which Petitioners attempt to transfuse into the Claim from the specification and the illustrative example shown in Figure 5,[2] when the specification contains no mention of this rim location as the supposed departure from the prior art.

It is noteworthy that, during the entire prosecution history of the application for this patent, the rubber-incorporating rim and its location were considered to be of no patentable moment whatsoever. The file history shows that the Patent Office steadfastly insisted, without ever retreating from this position (DA 170-171, 175-176, 181), and the patentee conceded, that the provision of the rubber-incorporating rim in the foot cover was obvious and well known from certain prior art patents. The patentee said in this regard: (DA 185)

> "It has been admitted at said interview, that the incorporation of an elastic yarn into knitting fabrics

[2]Certainly the illustration of one example of a form the end product may take cannot cure the deficiencies of a claim which fails to particularize any novelty, as recognized in a number of decisions: Consolidated Bunging Apparatus Co. v. Metropolitan Brewing Co., 60 Fed. 93, 95 (2 Cir. 1894); Wheeler et al. v. James, 189 Fed. 896, 902 (E.D.N.Y. 1911); Dugan v. Lear, Inc., 156 F.2d 29, 31 (2 Cir. 1946).

> is known per se and does not have any specific bearing on the present invention."

In fact, the Patent Office called for a full disclosure of how the rubber threads were incorporated with proper tension in the rim, if the patentee deemed this to be a feature of any novelty in his product, and the patentee declined to supply such a description on the express ground that the tension of the rubber threads was regulated in the same manner commonly used in making conventional socks or short socks. (DA 179)

Not one of the prior decisions cited by Respondents presents any authority for relying **wholly** upon resort to specification or drawings to supply to a patent claim, which otherwise described only what was conceded to be obvious or known, the **critical and only feature** which was asserted to constitute any distinction over the prior art. For the most part, the appellate and trial court decisions cited by Petitioner reveal that the claims by their own language already distinguished and particularized the patented subject matter from the prior art without regard to the term to be clarified by the specification or drawings[3], and in some of the cited decisions, the quoted statements related only to the issue of infringement, not validity, or to adequacy of the specification disclosure.[4] And wherever the specification was referred to for clarification of any claim terms, the patents, unlike the SARBO patent, contained extensive descrip-

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[3]Particularly Yosemite Chemical Co. v. United States, 360 F.2d 948 (Ct. Cl. 1966); Lincoln Stores v. Nashua Mfg. Co., 157 F.2d 154 (1 Cir. 1946); Wyott Manufacturing Co. v. Doran Coffee Roasting Co., 160 F. Supp. 644 (D. Col. 1958); Jones Knitting Corp. v. Morgan, 361 F.2d 451 (3 Cir. 1966); and H. H. Robertson Co. v. Klauer Mfg. Co., 98 F.2d 150 (8 Cir. 1938).

[4]Steiner and Voegtly Hardware Co. v. Tabor Sash Co., 178 Fed. 831 (C.C.N.J. 1910); Illinois Tool Works, Inc. v. Brunsing, 389 F.2d 38 (9 Cir. 1968); Del Francia v. Stanthony Corp., 278 F.2d 745 (9 Cir. 1960); Victor Cooler Door Co. v. Jamison Cold Storage Door Co., 44 F.2d 288 (4 Cir. 1930).

tions in the specifications identifying the things signified by that term as one of the novel departures over the prior art.

Of the Supreme Court decisions cited by Petitioners, the claims in *United States v. Adams*, 383 U.S. 39, 86 S. Ct. 708, 15 L. Ed. 2d 572 (1966), already distinguished over the prior art by reciting the magnesium and fused cuprous chloride electrodes, without requiring any restriction by interpretation to their use with a "water electrolyte" and additionally the specification had expressly emphasized that water alone could be used. In *Exhibit Supply Company v. Ace Patents Corporation*, 315 U.S. 126, 62 S. Ct. 513, 86 L. Ed. 736 (1942), there was not even an issue of validity in the case, and reference was had to the specification and drawings merely to clarify the permissible scope of the term "embedded" on the issue of infringement.

In *Schriber-Schroth Co. v. Cleveland Trust Co.*, 305 U.S. 47, 59 S. Ct. 8, 83 L. Ed. 34 (1938), reference to the drawings was had only to determine whether they might support introduction of added description by amendment to the specification and to the claims, and is no authority for resorting to the drawings to supply limitations to claims which do not already particularize and distinguish the invention.

Graver Tank & Manufacturing Co. v. Linde Air Products Co., 336 U.S. 271, 69 S. Ct. 535, 93 L. Ed. 672 (1949), and *Permutit Co. v. Graver Corporation*, 284 U.S. 52, 52 S. Ct. 53, 76 L. Ed. 163 (1931), cited by Petitioners thoroughly support, rather than contradict, the Court of Appeals' decision in the present case, and are significant for the immediately adjacent or intervening language omitted from Petitioners' quotations. In the *Graver Tank* decision, immediately preceding the language quoted at Pet.B 16, this Court said:

> "While vain repetition is no more to be encouraged in patents than in other documents, and claims like other statements may incorporate other matter by reference, *their text must be sufficient to 'particu-*

> *larly point out and distinctly claim' an identifiable invention or discovery*. We have frequently held that it is the claim which measures the grant to the patentee." (emphasis added)

The *Graver Tank* decision is significantly analogous to the present case, and thoroughly sustains the determination that SARBO Claim 3 could not be limited or qualified by the specification to mean only a foot cover whose rim lies below the instep, as the Supreme Court there agreed with the District Court decision that the terms "silicates" and "metallic silicates" in two of the claims could not be limited or qualified by the specification to mean only the nine metallic silicates which has been proved operative and that these claims were therefore invalid.

The language omitted in Petitioners' quotation from the *Permutit* case, at Pet.B 16, pointed to the indispensable function which patent claims must serve in apprising the public of the limits of the patented monopoly, stating:

> "The statute requires the patentee not only to explain the principle of his apparatus and to describe it in such terms that any person skilled in the art to which it appertains, may construct and use it after the expiration of the patent, but also to *inform the public during the life of the patent of the limits of the monopoly asserted, so that it may be known which features may be safely used or manufactured without a license and which may not.*" (emphasis supplied)

Obviously, SARBO Claim 3 cannot inform the public of the limits of the patent monopoly when it fails to identify the assertedly novel location of the rim and in no way restricts the type of shoe for which the foot cover should serve as an undersock.

The impropriety of relying upon the specification, rather than the language of the claims themselves, to supply the required particularity and distinctiveness was recognized in *McCarty v. Lehigh Valley Railroad Co.*, 160 U.S. 110, 116,

16 S. Ct. 240, 40 L. Ed. 358 (1895), cited in the *Permutit* decision, where this Court said:

> "There is no suggestion in either of these claims that the ends of the bolster rest upon springs in the side trusses, although they are so described in the specification and exhibited in the drawings. It is suggested, however, that this feature may be read into the claims for the purpose of sustaining the patent. While this may be done with a view of showing the connection in which a device is used, and proving that it is an operative device, we know of no principle of law which would authorize us to read into a claim an element which is not present, for the purpose of making out a case of novelty or infringement. The difficulty is that if we once begin to include elements not mentioned in the claim in order to limit such claim and avoid a defense of anticipation, we should never know where to stop."

In deciding that SARBO Claim 3 clearly failed to satisfy the requirements of particularity and distinctness imposed by 35 USC § 112, the Court of Appeals did not violate any principles of law enunciated by this Court. On the contrary, the Court of Appeals applied the statutory criterion to the SARBO Claim in a manner thoroughly consistent with, and in the only manner which would be consistent with, the principles laid down by this Court in the decisions referred to above, and the express interpretations of the statute given in *United Carbon Co. v. Binney & Smith Co.*, 317 U.S. 228, 63 S. Ct. 165, 87 L. Ed. 232 (1942), and *General Electric Co. v. Wabash Appliance Corp. et al.*, 304 U.S. 364, 58 S. Ct. 899, 82 L. Ed. 1402 (1938). In the *United Carbon* case, this Court extensively discussed § 4888 of the Revised Statute, which was the predecessor of 35 USC § 112, stating: (317 U.S. 232)

> "Section 4888 of the Revised Statutes, 35 USCA § 33, requires that the applicant for a patent 'shall particularly point out and distinctly claim the part, improvements, or combination which he claims as his invention or discovery.' As the Court recently

stated in General Electric Co. v. Wabash Appliance Corp., 304 U.S. 364, 369, 82 L. Ed. 1402, 1405, 1406, 58 S. Ct. 899:

> 'Patents, whether basic or for improvements, must comply accurately and precisely with the statutory requirements as to claims of invention or discovery. The limits of a patent must be known for the protection of the patentee, the encouragement of the inventive genius of others and the assurance that the subject of the patent will be dedicated ultimately to the public. The statute seeks to guard against unreasonable advantages to the patentee and disadvantages to others arising from uncertainty as to their rights. The inventor must 'inform the public during the life of the patent of the limits of the monopoly asserted, so that it may be known which features may be safely used or manufactured without a license and which may not.' The claim 'measure the invention.' . . . In a limited field the variant must be clearly defined.'"

The paramount public interest in strict insistence upon this statutory requirement was recognized with the statement at 317 U.S. 233:

> "* * * To sustain claims so indefinite as not to give the notice required by the statute would be in direct contravention of the public interest which Congress therein recognized and sought to protect. Cf. Muncie Gear Works v. Outboard Marine & Mfg. Co., 315 U.S. 759, 86 L. Ed. 1171, 62 S. Ct. 865."

The practical importance of adhering to this statutory requirement was emphasized with the statement: (317 U.S. 236)

> "The statutory requirement of particularity and distinctness in claims is met only when they clearly distinguish what is claimed from what went before in the art and clearly circumscribe what is foreclosed from future enterprise. A zone of uncertainty which enterprise and experimentation may enter only at the risk of infringement claims would discourage invention only a little less than unequivocal

> foreclosure of the field. Moreover, the claims must be reasonably clearcut to enable courts to determine whether novelty and invention are genuine."

In the *General Electric* case, this Court preceded the language earlier quoted in *United Carbon* with the statement: (304 U.S. 368)

> "The statute has another command. Recognizing that most inventions represent improvements on some existing article, process or machine, and that a description of the invention must in large part set out what is old in order to facilitate the understanding of what is new, Congress requires of the applicant 'a distinct and specific statement of what he claims to be new, and to be his invention.'"

Pertinent to Petitioners' assertion that the functional terminal phrase of SARBO Claim 3 identifies some parts of the foot which the foot cover would cover, this Court in the *General Electric* case pointed out that a claim cannot be justified by such terms, stating: (304 U.S. 372)

> "But Congress requires, for the protection of the public, that the inventor set out a definite limitation of his patent; that condition must be satisfied before the monopoly is granted. * * * The difficulty of making adequate description may have some bearing on the sufficiency of the description attempted, but it cannot justify a claim describing nothing new except perhaps in functional terms."

To like effect is this Court's statement in *Halliburton Oil Well Cementing Co. v. Walker*, 329 U.S. 1, 9, 67 S. Ct. 6, 91 L. Ed. 3 (1946). The last paragraph of 35 USC § 112, quoted at Pet.B 12, at most only says that a means plus function phrase may be construed "to cover" what is described in the specification "and equivalents thereof" but does not say the phrase shall be *limited* to that construction. It certainly does not authorize limitation of the terminal functional clause in SARBO Claim 3 to the exact rim location shown in the drawings, especially when that clause

only means that the body covers *at least* the tip, sole and toes of the foot. See *In re Teague*, 254 F.2d 145, 151 (C.C.P.A. 1958).

This Court's decisions make clear that 35 USC § 112 assigns to the **claims**, not to the specification or drawings, the indispensable function of particularizing and distinguishing what is patented from what is obvious from the prior art, so that the *public* is clearly informed of the limits of the asserted monopoly. It is the protection of the *public* which is paramount and necessitates rigid adherence to this statutory command. The extent to which Petitioners labor in their brief to construct from the SARBO specification, which says nothing indicating that rim location below the instep is regarded as a novel feature, an implied limitation to such location in the Claim, which also says nothing about rim location, emphasizes the unreasonable burden which the public would face in trying to ascertain the limits of the patent claim. A hopeless state of uncertainty and indefiniteness would result, which this statute is specifically designed to avoid, as the public cannot, and should not, be called upon to foresee what possible distortions of the claims may be made from the specification when the claims themselves do not particularize the limit of the patent monopoly.

In light of this Court's decisions, the Court of Appeals was clearly right in the present case in pointing to its own prior statement in *Triumph Hosiery Mills, Inc. v. Almance Industries, Inc.*, 299 F.2d 793, 801 (4 Cir. 1962), *cert. denied*, 370 U.S. 924, 82 S. Ct. 1566, 8 L. Ed. 2d 504 (1962), wherein it recognized that:

> "The uncertainties and confusion arising from such a patent would be intolerable. Infringement would be difficult to judge, for just when the patentees' manufacture was within or without the patent would not be readily apparent to a competitor."

Since SARBO Claim 3 fails to identify in any way the rim location, and thus does not make known the rim location limits of the monopoly purported to be granted, the Claim certainly fails to meet the statutory mandate of particularity and distinctness and is fatally defective. Whether patent claims could, in appropriate circumstances, be limited by a resort to patent specifications which clearly delineate a novel feature signified by the language in the claims is not in issue here, as the SARBO specification, like Claim 3, fails to specify and circumscribe any particular rim location. Hence, the Court of Appeals correctly concluded that: (Pet. B 34-35)

> "* * * by the breadth of the claim that which is conceded to have been known in the prior art - that which the prior art anticipated or made obvious - is included within the claimed invention; hence, the claim is invalid for overclaiming. * * *
>
> "It follows, also, that by failure to specify the critical location of the laid-in rubber rim the claim of the patent is invalid for failure to satisfy 35 USC § 112."

CONCLUSION

Respondents respectfully submit that the decision reached by the Court of Appeals was entirely just and involves no error or misapplication of the law, nor conflict between decisions of different Courts of Appeal, nor any question of possible interest or importance which should absorb the time of this Court.

It is submitted that the public interest has been served by the holding of the Court of Appeals that the patent claim in suit is invalid, and that the Petition is wholly without merit and should be denied.

Respectfully submitted,

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